IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/09/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.13255 of 2001

S.Inbaraj
Office Assistant
ELM Fabricious Higher Secondary
School (HSS)
Purasawalkam
Chennai 7. ..... Petitioner

-Vs-

1. The Director of School
Education (HSS)
DPI Complex, Chennai 6.

2. The District Educational Officer
North Madras, Egmore,
Chennai 8.

3. The Tamil Evangelical Luthren Church
rep. by its Secretary
Tranquebar House
Madurai Road
Trichy 1.

4. The Tamil Evangelical Luthern
Church Educational Board
rep. by its Chairman
Tranquebar House
Madurai Road
Trichy 1.

5. The ELM Fabricious Higher Secondary
School, rep. by its Correspondent
Purasawalkam
Chennai 7

6. Mr.J.Benjamin Premkumar
Office Assitant
ELM Fabricious Higher Secondary
School (HSS)
Chennai 7. ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, as stated therein.

!For Petitioner : Mr.R.Thyagarajan SC
for Mr.K.Venkataraman
For Respondents : Mrs.Thenmozhi
Shivaperumal AGP for R1 and R2

No appearance for RR3 and 4.

Mr.M.Muthupandian for R5

Mr.Yasod Vardhan for R6.

:ORDER

Heard the learned counsel appearing for the parties.
2. In this writ petition, the prayer has been made for a writ of mandamus or any other appropriate writ or direction, to direct the respondents to allow the petitioner to function as an Office Assistant in the respondent school and to regularise his service from the date of his initial appointment with all back-wages and service benefits.
3. It is necessary to notice the chequered history of the case. The fifth respondent is an aided Higher Secondary School. The third and fourth respondents manage such school as well as several other schools in various Districts in Tamilnadu. The petitioner was appointed as an Office Assistant under the fifth respondent school with effect from 29.07.1994. At that stage, there was some internecine dispute among various persons claiming to be incharge of the management. Some other persons had also been appointed as teachers. Such appointments were challenged by the group claiming to be the validly constituted management in WP.No.2380 to 2384 of 1995 and an order of interim stay was passed on 17.02.1995. The Government authorities namely present respondents 1 and 2 were not parties to such writ petition. Similarly the present petitioner was not a party respondent in the said writ petition. Thereafter the District Educational Officer passed an order of approval approving the petitioner appointment on 02.11.1995. Even though the DEO was not a party to the writ petition and the order of stay was not directed against him and even though the proposal for approval had been sent by the management of the school prior to the date of the interim order, a contempt petition in Cont.P.No.32 of 199 6 was filed on the allegation that the interim order dated 17.02.1995 had been violated. After initiation of such contempt proceeding, the DEO cancelled the approval accorded in respect of the petitioner and five others by order dated 15.02.1996. Thereafter, the writ petitions were withdrawn. At the time of the withdrawal of the writ petitions, the learned Single Judge directed the Educational authorities to go into the claim of the concerned appointees and to pass orders within four weeks. Pursuant to the aforesaid order, the Educational authority again passed an order dated 28.10.1997 according approval. However, the management filed Writ Appeal in WA.No.1357 of 1997 wherein the Division Bench quashed the direction given by the learned Single Judge in the order dated 17th September,1997. After the writ petition had been withdrawn, the management

had appointed the present 5th respondent as an Office Assistant and five other persons as teachers on 31.05.1997 which was approved on 12.06.1998. After the 6th respondent was appointed on 31.05.1997, the petitioner without any formal order was stopped, from working with effect from 01.06.2000. On 15.06.1 998, a fresh order of appointment was issued in respect of the present petitioner and other five teachers. At that stage, four of the appointees who had been appointed on 31.05.1997 and whose appointment had been approved on 12.06.1998, filed W.P.No.9853 of 1998 and other connected matters. The present petitioner was not a party to the said writ petition. However, the Government authorities were parties to such writ petition. The said writ petition was allowed by a learned single Judge of this Court by order dated 10.12.1999. It was observed by the learned Single Judge that the appointment had been made on 31 .05.1997 by a validly installed body and the subsequent order of approval dated 12.06.1996 had not been challenged by the rival governing group which had assumed power by then and thus the approval had become final. It was further observed that the approval granted on 28.10.1997 to the concerned teachers (the appointment of present petitioner had been approved by the very same order) was based on the order of the learned Single Judge dated 31.05.1997, and that order has been set aside in the Writ appeal and the approval stood effaced. Even though, such order of the learned single Judge was challenged by the management, it is stated that in the mean time such appeals having been withdrawn on 29.11.2001. The present 6th respondent who could not rejoin duty due to Cardiac disease subsequently filed WP.No.1526 of 20 00 praying that he should be reinstated. He was allowed to rejoin and therefore such writ petition has been withdrawn on 02.07.2001. At this juncture, the present writ petition has been filed. No fresh approval had been granted in respect of the petitioner's appointment.

4. While disposing the W.P.Nos.2380 to 2384 of 1995, it had been observed by the learned Single Judge as follows:

"It is further clarified that the legislation of the rights of the petitioners has got nothing to do with the rights of the earlier appointed six teachers. They may still have their rights. Those rights cannot be brought in as a defence to the rights of the present four teachers. They may independently assert their rights against the Management."

5. The learned counsel appearing for the petitioner has contended that since the initial appointment of the petitioner had been challenged on the ground that the management committee which had appointed such petitioner had not been validly constituted, has not been decided and the writ petition was withdrawn, it should be taken that the appointment was valid. Similarly, it has been stated that the approval once accorded, should not have been withdrawn merely because a contempt petition has been filed. Even though I am prima facie inclined to accept such submission, I find that the cancellation of the approval of the appointment of the present petitioner on 15.02.1996, has subsequently gone unchallenged and as a matter of fact the fresh appointment order issued in respect of the petitioner on 15.06.1998 has been accepted by him. Therefore, even though the counsel for the petitioner is justified in contending that the approval which was granted on 1 7.02.1995 should not have been recalled, by virtue of the fact that the petitioner has accepted such cancellation and has subsequently accepted fresh appointment, it would not be open to the petitioner to contend otherwise at the present juncture.

6. The learned counsel for the petitioner has further contended that since the petitioner was not a party to the earlier decision, his appointment cannot be said to be illegal. Technically such submission is correct. As a matter of fact in the earlier case it has been specifically observed that the rights of such persons who had been appointed earlier had not been determined in the said case and such persons were free to enforce their right. The appointment of the petitioner was made by the Management on 15.06.1998. There is nothing on record to show that the management had not been validly constituted at that time. However, such subsequent appointment is yet to be approved. On the other hand, the appointments of persons including the present respondent No.6 made on 31.05.1997 had been approved on 12.06.1998 and such approval had not been challenged by anybody and have been upheld in the other case. Therefore, the approval of the other teachers having not been challenged and even though the present petitioner and the present respondent were not parties to the said writ petition, the very same logic would be applicable. Thus, even though the appointment and approval in respect of 6th respondent may not be invalidated at this stage, the petitioner's right has to be protected. He was appointed on 15.06.1998 and such appointment has not been cancelled. Therefore, it must be taken that he is still continuing in service. If the appointment of a person is approved by the authorities, such person is entitled to get salary from the Government. But where such an appointment has not been approved, there is no bar in the management to continue any such person and pay salary from its own fund. In the present case, the present imbroglio has been brought about by the management. Therefore, the management cannot take refuge under the plea that another person has already appointed and approved and the present petitioner cannot continue. I understand that several schools are run by the present respondents 3 and 4. Therefore, the petitioner can be allowed to continue either in the present school or any other school. If there is any vacancy in any approved post in any of the schools, necessary recommendation shall be made by the management to the Government for approval and the Government should accord approval within a period of six weeks from the date of receipt of such request from the management. If there is no such approved vacancy, the petitioner must be continued either in the present school or in any other school at the discretion of the management, but the salary must be paid by the management till the appointment is approved by the Government against any approved vacancy.

7. The petitioner has also prayed for payment of earlier salary. It has been stated by the counsel for the management that even though a formal letter of termination has not been issued, the petitioner is not actually working. Without entering into this disputed question, I direct that the petitioner shall be entitled to the salary from today.

8. Subject to the aforesaid direction and observation, the writ petition is disposed of. No costs.

Index:yes
Internet:yes

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